

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
Plaintiff
vs
JIMMY CARABALLO COLON
Defendant

CRIMINAL 13-0383CCC

ORDER

Defendant Jimmy Caraballo Colón (Caraballo) filed a Motion to Suppress Statements (d.e. 66) claiming that since he was arrested without a warrant all his post-arrest statements were fruits of the poisonous tree and should be suppressed. He additionally claimed that as those statements were not voluntarily made, they should also be suppressed for having been obtained in violation of the Fifth Amendment of the U.S. Constitution. The United States responded (d.e. 74) denying defendant's contentions, and positing instead that the arresting officers had probable cause to arrest the defendant and properly advised him of his constitutional rights upon arrest. A reply by defendant (d.e. 77) followed.

The matter was referred to the U.S. Magistrate-Judge for a hearing and report and recommendation (d.,e. 79). After a hearing, U.S. Magistrate-Judge Bruce J. McGiverin filed a Report and Recommendation finding that the facts known to the arresting officers when the search warrant was executed at Caraballo's home were sufficient to establish probable cause to arrest him and that the statements he provided after the arrest followed Miranda warnings. The Magistrate-Judge further found that as Caraballo did not unequivocally and unambiguously invoke his right to counsel during the interrogation, the agents

were not required to cease questioning. Finally, the Magistrate-Judge determined that Caraballo's Sixth Amendment right to counsel was not violated because as the interrogation took place before the criminal complaint was filed against him that right had not yet attached. He, thus, recommended that defendant's Motion to Suppress Statements be denied. Defendant, predictably, objected (d.e. 133).

Having considered the parties' briefs, the transcript of the suppression hearing held before U.S. Magistrate-Judge McGiverin (d.e. 126) and all applicable case law, the Court APPROVES and ADOPTS the Report and Recommendation of U.S. Magistrate-Judge McGiverin (**d.e. 127**) for we concur with his factual findings and legal conclusions that defendant's arrests was supported by probable cause and that the statements which followed it were obtained after he had been Mirandized and without violating his right to counsel under the Sixth Amendment. Accordingly, defendant's Motion to Suppress Statements (**d.e. 66**) is DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on May 8, 2018.

S/CARMEN CONSUELO CEREZO
United States District Judge